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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Yuba)**

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In re ANGEL B., a Person Coming  
Under the Juvenile Court Law.

C063571

YUBA COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

(Super. Ct. No.  
JV-SQ-08-0000213)

Plaintiff and Respondent,

v.

JOSEPH B.,

Defendant and Appellant.

Appellant Joseph B., father of the minor, Angel B., appeals from an order of the juvenile court terminating reunification services. (Welf. & Inst. Code, §§ 364, 366.21, subd. (f) & 395.)<sup>1</sup> Appellant contends the court's termination of those services after placing the minor with her mother in a plan of family maintenance was an abuse of discretion. We shall affirm the juvenile court's order.

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On September 11, 2008, Yuba County Child Protective Services (CPS) responded to a call that appellant was smoking marijuana in his motel room with the three-year-old minor present. The minor was placed into protective custody after social workers found marijuana, alcohol and numerous prescription drugs in appellant's room, all of which were accessible to the minor. The whereabouts of the minor's mother, Amanda E., were unknown. Appellant's last contact with mother had been one month prior.

The Yuba County Health and Human Services Department filed a juvenile dependency petition alleging appellant's failure to protect the minor as a result of his substance abuse and for having numerous prescription drugs, alcohol and marijuana in the residence and accessible to the minor. (§ 300, subd. (b).)

At the September 17, 2008 detention hearing, the court ordered the minor remain in temporary foster care and granted visitation to appellant and mother. Both parents were ordered to obtain mental health and substance abuse assessments.

At the October 16, 2008 jurisdictional hearing, the court sustained the allegations in the petition, adjudged the minor a dependent child of the court (§ 300, subd. (b)), continued out-of-home detention in foster care, and ordered separate, regular supervised visitation for mother and father at CPS.

The November 2008 disposition report states that the relationship between appellant and mother ended in December

2007. Mother was living with the maternal grandmother and was involved in a new relationship with Stephen J. Appellant admitted long-term use of marijuana and alcohol. He did not believe he was doing anything wrong or that the minor was at risk when she was detained. The social worker noted that appellant appeared "to be willing to cooperate with services and at the same time denies that he has a substance abuse problem or that [the minor] could have been injured" as a result of his actions. The social worker also noted that, during a recent visit to appellant's apartment, she found tobacco, medications and pornographic material "in plain sight on the floor and on a shelf easily accessible to [the minor] should she visit his home." It was unclear to the social worker whether either parent would continue to cooperate with or gain any benefit from services "when the process has run its course." The report recommended that, despite appellant's "minimal" progress, reunification services should be provided to both parents.

At the November 6, 2008 dispositional hearing, appellant's counsel indicated that appellant was participating in an outpatient substance abuse treatment program and attending AA/NA meetings, and was scheduled to begin parenting classes later in the month.

At the continued dispositional hearing on November 24, 2008, the court ordered reunification services for both parents, and set a six-month review hearing.

According to the April 2009 status review report, appellant completed parenting classes and visited the minor consistently. The results of drug tests provided by him were negative; however, he was discharged from the outpatient drug treatment program on February 13, 2009, "for non-participation, defensiveness, and falling asleep." Appellant later explained that his problem of sleeping during drug treatment was the result of nightly visits by ghosts who live in his home. He was, however, regularly attending therapy. According to the report, during an unannounced visit to appellant's home, the social worker found several large bottles of beer and pornography, and admonished appellant regarding the minor's access to those items.

The report states that, between November 26, 2008, and April 1, 2009, appellant submitted to random drug tests on 18 occasions and failed to show up twice. All tests were negative. Appellant attended several AA/NA meetings, but admitted he was not attending meetings regularly as directed by the court.

The report also states that mother moved in with her brother and sister-in-law. She informed staff that she was expecting a baby with her boyfriend, Stephen J., who was also living in the home. Stephen was on parole for spousal abuse in Yuba County.

At the six-month review hearing on April 15, 2009, the court determined that both parents were making "substantial" progress toward alleviating or mitigating the causes resulting

in the minor's removal. The court continued the minor as a dependent child of the juvenile court and continued reunification services to both parents.

The October 2009 status review report for the 12-month permanency hearing states that appellant still struggles with the issues that resulted in the minor's removal. For example, he felt his apartment was haunted and lost sleep due to fighting with ghosts at night. He has told both the social worker and his therapist that it is not safe for the minor to return to his residence. He was prescribed Elavil, an antidepressant, to address his back problem and lack of sleep; however, he refused to take the medication, stating that if he slept the ghosts would "just have their way with me."

Appellant denies using drugs or alcohol, but admits using marijuana "off and on." He was directed to attend three to five AA/NA meetings per week, provide verification of his attendance, maintain contact with his sponsor and meet once a month with the substance abuse counselor, Betty Cropper. However, he met with Cropper once on May 27, 2009, and provided verification of his attendance, but failed to return thereafter. He attended 13 AA/NA meetings between April 19 and May 30, 2009, but provided no further verification of attendance. Between April 24 and September 28, 2009, he submitted to random drug testing nine times (resulting in six negative tests and three positive tests for tetrahydrocannabinol (THC), the active ingredient in marijuana) and was a "no-show" 15 times.

Appellant attended 23 of 32 possible therapy sessions with his therapist, participated well in sessions and improved in his attitude, blaming others less for his situation and "working more toward a remedy." He completed the parenting class on May 28, 2009.

According to the report, appellant was arrested for disturbing the peace on August 29, 2009. Law enforcement officers were called to appellant's residence and found him under the influence of alcohol and yelling, "I'm gonna fucking kill you. If that's how you are, I'm gonna fucking kill you." Appellant later explained that he was "pissed off and cussing at the ghosts."

The report states that mother continues to live with her brother and sister-in-law, as well as her boyfriend, Stephen, who was discharged from parole on September 14, 2009. She is expecting Stephen's baby and will continue to live with her brother and sister-in-law when the baby is born; however, she plans to move into her own apartment and has placed her name on a waiting list. Mother states she wants a relationship with Stephen, but has decided to live apart from him "for now."

The October 2009 report concludes that appellant's participation in services has been "minimal" and his prognosis for return of the minor to his care "poor," and recommends that services be terminated.

The 12-month review hearing was held on October 14, 2009. The social worker testified that the minor should be returned to

mother and appellant's services terminated. She acknowledged that appellant had not been violent or assaultive towards the minor or anyone else while in the minor's presence, but noted he still complained of seeing ghosts in his home. She also noted that law enforcement had recently been called to the home because appellant was yelling and cursing uncontrollably and threatening to kill the ghosts. Appellant had, in the past, expressed fear "that the ghosts would harm his child or take his child from him."

The social worker confirmed that, at the time the minor was removed from appellant's residence, appellant was under the influence of alcohol. She testified that, although appellant successfully completed parenting classes and was currently prosecuting a social security disability case and intended to use the proceeds to find another, more suitable place to live with his daughter, the problems which existed at the time of removal still existed, such as appellant's continued distrust for the child protective system, his worsening back problems, his continued unemployment, and the fact that his residence had not changed. She noted that appellant told her he did not want the minor returned to him at his current residence, as he felt it was not safe for her there because of the ghosts.

Appellant testified at the hearing and stated that, other than marijuana, he had not used any controlled substances in the six months prior to the hearing. He admitted he drinks beer occasionally and had had a beer the night he was arrested for

disturbing the peace. He acknowledged he was required to provide proof of his attendance at AA/NA meetings, but explained that he stopped complying when "a couple of people" told him he was not going to get his child back. Appellant stated the last time he was drug tested was September 28, 2009; however, the court pointed out the notation in the record that appellant was a "no-show" on that date. Appellant confirmed that he felt it was not safe for the minor at his current residence because of the ghosts and he did not want her to return there.

The court found that, while mother's progress in services was "substantial," "[t]he extent of the progress made by [appellant] toward alleviating the mitigating causes necessitating placement has been moderate." The court placed the minor with mother with continued services, and terminated services to appellant.

Appellant filed a timely notice of appeal.

### **DISCUSSION**

Appellant contends that, because he participated in services and visitation, and because placement with mother is "at best, a dicey proposition" given her involvement with a parolee with a history of domestic violence and the fact that she will be subject to the stress of caring for a newborn, the juvenile court abused its discretion in terminating his reunification services.

Respondent argues the court did not abuse its discretion and argues that where, as here, "both parents are offered



services yet only one parent obtains placement of the child," our review should be governed by section 364. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644 (*Gabriel L.*).)

Section 364 provides that when a juvenile court adjudicates a minor to be a dependent child of the court and does not remove the minor from parental custody, the court must continue the matter "to a specific future date not to exceed six months after the date of the original dispositional hearing." (§ 364, subd. (a).) The purpose of the section 364 hearing is for the court to review the services provided to the family and the progress made by the family in eliminating the conditions or factors that required court supervision. (§ 364, subd. (b).) At least 10 days prior to the section 364 hearing, the social worker shall file a supplemental report providing said information and making a "recommendation regarding the necessity of continued supervision." (*Ibid.*) "After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary." (§ 364, subd. (c).) If the juvenile court retains jurisdiction over the minor, "it shall continue the matter to a specific date, not more than six months from the time of the hearing, at which point the court shall again follow the procedure specified in subdivision (c)" for another review hearing. (§ 364, subd. (d).)

In *Gabriel L.*, the two-year-old minor was removed from the home and a dependency petition filed under section 300,

subdivision (b), alleging he was at risk because the home was filthy and in a state of disrepair, with no electricity, no running water and no furniture but for mattresses on the floor. (*Gabriel L.*, *supra*, 172 Cal.App.4th at p. 648.) The court declared the minor a dependent child, removed him from his parents' care, placed him in foster care, and ordered the parents to comply with services. (*Ibid.*) At the 12-month review hearing, the court placed the minor with the mother under a family maintenance plan and terminated the father's court-ordered services. (*Id.* at p. 649.) The father appealed, claiming the court abused its discretion in terminating his services while ordering that the minor be placed with the mother and providing services to her. (*Ibid.*)

In affirming the juvenile court's order, our colleagues in Division One of the Fourth Appellate District concluded that the court's discretion to decide whether to continue to offer reunification services to the noncustodial parent, after a period during which both parents were offered services, followed by placement of the child with one parent "should be examined under Welfare and Institutions Code section 364." (*Gabriel L.*, *supra*, 172 Cal.App.4th at p. 647.) Following its prior decision in *In re N. S.* (2002) 97 Cal.App.4th 167, the court reasoned that, because the minor was a dependent child of the juvenile court, the juvenile court was "required to conduct review hearings every six months either under section 366.21 or under section 364," but where that child has been placed back in the

custody of one parent, section 366.21 does not apply and therefore section 364 must. (*Gabriel L.*, *supra*, 172 Cal.App.4th at p. 650; *In re N. S.*, *supra*, 97 Cal.App.4th at p. 172.)

Here, like *Gabriel L.*, the minor was removed from custody and placed in foster care while both parents were under court order to participate in reunification services. And, like *Gabriel L.*, the court conducted a 12-month review hearing, at the conclusion of which it placed the minor with the mother under a family maintenance plan and terminated appellant's court-ordered services. Under those circumstances, the focus is no longer on reunification, but rather on whether continued supervision in the family home is necessary, making section 364 the applicable statute. (*Gabriel L.*, *supra*, 172 Cal.App.4th at p. 650.)

Where the minor has been placed with one parent under a plan of family maintenance, we review a juvenile court's decision to terminate reunification services to the other, nonreunifying parent for abuse of discretion. (*Gabriel L.*, *supra*, 172 Cal.App.4th at pp. 651-652.)

Here, the record supports the juvenile court's finding that appellant's progress in services had been "moderate." On the one hand, defendant attended 23 therapy sessions out of a possible 32 and completed a parenting class. On the other, he was discharged from drug treatment for falling asleep, and claims he is sleep-deprived because ghosts fight with him at night. He also blames the ghosts for his refusal to take

medications prescribed to help him with his back problem and lack of sleep. He denies using drugs or alcohol, but admits using marijuana. He failed to meet with his substance abuse counselor other than once on May 27, 2009, and stopped providing verification of his attendance at AA/NA meetings after May 30, 2009. He failed to show up for random drug testing almost twice as many times as he tested, and three of the nine tests he did show up for were positive for THC. Less than two months before the 12-month review hearing, police found appellant under the influence of alcohol, yelling and swearing and threatening to kill ghosts.

Appellant argues the court's decision to place the minor with mother was dubious, given that she was unemployed and about to give birth to another child and was involved with a parolee with a history of domestic violence. Appellant's argument misses the mark. Even if we were to assume that those factors were related to mother's participation in services, appellant himself concedes that a court may order reunification services to one parent but not the other, and a decision to terminate services to one parent is not dependent upon the level of participation of the other parent. (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 58, 60.)

The juvenile court did not abuse its discretion in terminating appellant's reunification services.

## DISPOSITION

The juvenile court's order is affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, SCOTLAND, Acting P. J.\*

\_\_\_\_\_, ROBIE, J.

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\* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.